

**REMARKS**

In the Office Action, the claims were rejected under various combinations of U. S. Patent No. 6,529,561 (Sipola); U. S. Patent No. 6,208,663 (Schramm et al.); U.S. Patent Publication No. US 2002/0037058 (Birru); U.S. Patent No. 6,021,124 (Haartsen); U. S. Patent No. 6,522,650 (Yonge, III et al.) and U.S. Patent No. 6,128,276 (Agee). The present claims more clearly define that a higher data is received from a higher layer ARQ mechanism and this data is formatted by a physical layer transmitter and retransmitted based on acknowledgements. None of the references disclose this dual ARQ type arrangement. Such an arrangement as described in the present specification relieves the loading on the higher layer ARQ mechanism and speeds up the throughput of wireless data. Further, newly added claims 24 and 25 describe the physical layer ARQ mechanism as being transparent to the higher layer ARQ mechanism, further distinguishing the claims from the cited art.

Additionally, Applicant respectfully submits that the amended claims overcome the statutory double patenting rejection. With respect to the non-statutory double patenting rejection, Applicant is willing to file a terminal disclaimer to overcome that rejection if the claims are deemed otherwise allowable.

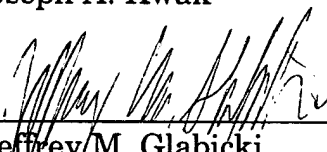
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**Application No.:** 10/084,414

Additionally, with respect to the September 1, 2004 Form PTO-1449, Applicant submits a copy of both cited references and provides a copy of that form for the Examiner's consideration and initialing of those references.

Reconsideration and entry of this amendment is respectfully requested.

Respectfully submitted,

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